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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	CASE NO. V1300CR201080049 DIVISION PTB Hon. Warren R. Darrow **DEFENDANT JAMES ARTHUR RAY'S MOTION IN LIMINE (4) TO EXCLUDE EVIDENCE OF (A) MR. RAY'S POST-SWEAT LODGE CONDUCT AND (B) ACTS OR OMISSIONS OF JRI EMPLOYEES AND VOLUNTEERS**

I. INTRODUCTION

At the 404(b) hearing in this case, the State introduced two categories of evidence that are irrelevant to the charged crimes and thus inadmissible: (A) evidence that Mr. Ray did or said certain things *after* the sweat lodge ceremonies of 2003-2009 concluded; (B) evidence that individuals *other than Mr. Ray*, but affiliated with James Ray International ("JRI"), did or said things that may have affected participants during the Spiritual Warrior Retreats of 2003-2009.[1] These actions or statements have no bearing on Mr. Ray's guilt or innocence of the charged crimes. As the Court noted at the *Terrazas* hearing, the State's attempt to use evidence of how Mr. Ray "reacts after an incident" is tantamount to "talking about some trait of callousness." Reporter's Transcript ("RT"), Nov. 10, 2010, at 23:5–7. And "that would clearly not be admissible" in light of Rule 403. *Id.* Mr. Ray therefore moves to exclude evidence of his alleged post-sweat lodge conduct and statements. Further, Mr. Ray moves to exclude alleged acts, omissions or statements by JRI staff or volunteers. The State cannot prove that Mr. Ray committed the charged crimes by relying on the conduct or knowledge of others, and the introduction of such evidence would prejudice Mr. Ray and mislead the jury.

II. ARGUMENT

A. EVIDENCE OF MR. RAY'S POST-SWEAT LODGE CONDUCT IS IRRELEVANT AND PREJUDICIAL.

The State has alleged that Mr. Ray took or failed to take certain actions after the sweat lodge ceremonies in 2005, 2007, 2008, and 2009. For example, the State has repeatedly alleged the following instances of Mr. Ray's post-sweat lodge conduct or statements:

- That "Defendant was angry that Amayra Hamilton called 911; and that Defendant failed to follow up on the medical care received by Daniel [Pfankuch] to learn why he suffered medical distress and the role Defendant's sweat lodge ceremony played in that distress." State's Bench Memorandum Re: 404(B) Acts, filed December 3, 2010, at 8:22-24.
- That Mr. Ray (or anyone from JRI) did not inquire into the medical condition of Daniel Pfankuch after the 2005 sweat lodge or accompany Mr. Pfankuch to the hospital. *See* State's Offer of Proof re: 404(b) Prior Sweat Lodge Events,

[1] Mr. Ray moves herein to exclude evidence from the 2009 sweat lodge ceremony as well as from the sweat lodge ceremonies in 2003–2008. Should the Court grant Mr. Ray's Motion *In Limine* (1) to Exclude Evidence of Prior Bad Acts Pursuant to Ariz. R. of Evid. 404(b), the instant motion may become moot as to the 2003–2008 sweat lodge ceremonies.

Summary of Other Witnesses' Testimony, denied as Exhibit 129 but accepted as State's Brief (hereinafter State's Brief), at 2-4.

- Regarding the 2005 sweat lodge, "Amayra called 911; James Ray was mad at her ... James Ray yelled at Amayra like Tere has never heard before." State's Brief at 4.
- "James Ray showed no concern about Daniel's medical condition." *Id.* at 4.
- "James Ray never offered to pay Daniel's medical bills." *Id.* at 3.
- "What Mr. Ray did at the conclusion of the 2005 sweat lodge was he left. He went outside and was not taking care of his participants. That is not only similar but that's identical to what happens in 2009 when the sweat lodge ceremony concludes. Mr. Ray leaves." RT, Nov. 10, 17:9-14 (argument of Sheila Polk).

These are only examples; the State's disclosures are replete with similar opinions and comments by witnesses about Mr. Ray's alleged post-sweat lodge conduct and statements.

As the Court recognized at the *Terrazas* hearing, such evidence of "how someone reacts to [an] incident" clearly has no place at trial:

> "[W]hen you talk about something that happens after -- ... when you talk about something about how someone reacts to the incident, you have kind of a causation question that comes up there. And the other aspect that hasn't really been dealt with is a 403 aspect. It almost appears you're talking about some trait of callousness or something that might -- ***that would clearly not be admissible. An argument to that effect would not be admissible. Evidence to that effect would not be admissible.*** That's a 403 question."

RT, Nov. 10, at 22:22–23:9 (emphasis added).

Indeed, Rules of Evidence 401, 403, and 404 all compel exclusion of evidence of Mr. Ray's alleged post-sweat lodge conduct. To begin, the evidence is not relevant. *See* Ariz. R. of Evid. 401 (evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). Nothing about Mr. Ray's conduct *after* the sweat lodge ceremony affects whether he recklessly caused the three deaths at issue. Even the State conceded the irrelevance of Mr. Ray's post-sweat lodge conduct. *See* RT, 23:16–21 (Ms. Polk: "***I agree with the Court that how he reacts afterwards is not what's relevant***, that's not the point that the State's trying to

make. ***It's not how he reacts afterwards. It's how he reacted or failed to act while the ceremony is going on.***" (emphasis added)).

In addition, the State's evidence of Mr. Ray's purported post-sweat lodge conduct is highly prejudicial, and thus appropriate for exclusion under Rule 403. Evidence that Mr. Ray did not render medical aid or pay individuals' medical bills, for example, is a clear attempt to depict Mr. Ray as a callous person. Such evidence is all the more prejudicial when introduced through witnesses who offer inadmissible *opinions* of Mr. Ray's character as callous. The State is not permitted to try its case by disparaging Mr. Ray's character.

Finally, to the extent the State seeks to prove Mr. Ray's 2009 conduct by showing that he acted similarly in previous years, the State's attempt is barred by Rule 404, which prohibits propensity evidence. The State is not permitted to argue that Mr. Ray acted in an insensitive manner after prior sweat lodges and thus was more likely to act in that manner after the 2009 sweat lodge.

B. EVIDENCE OF ACTS OR OMISSIONS BY OTHER INDIVIDUALS IS IRRELEVANT AND PREJUDICIAL.

At the 404(b) hearing in this case, the State also repeatedly alleged that individuals *other than Mr. Ray*, but affiliated with JRI, said or did things that may have affected in some way the participants in sweat lodge ceremonies that Mr. Ray conducted. For example, the State elicited and offered the following statements:

- That JRI volunteers encouraged or pushed a woman to re-enter the 2009 sweat lodge. *See* RT, Nov. 10, 10:15–17 (testimony of Debra Mercer).[2]
- That JRI volunteers "knew" that a participant in the 2008 sweat lodge was taken to a bathtub to recover from alleged distress. *See* RT, Nov. 10, 83:19 (testimony of Debra Mercer).
- That JRI volunteers did or did not render adequate aid to participants who felt unwell after the pre-2009 sweat lodge ceremonies. *See, e.g.*, State's Brief at 5 (2007 participant Susan Isaacs "was shocked at the staff's failure to help people in distress").

[2] Jennifer Haley stated that the JRI volunteer, Marta Reis, acted on her own and not at the direction of Mr. Ray with regard to this incident. *See infra* 4:25-27, 5:1 and footnote 3.

- "Staff refused to call 911 without checking with James Ray." *Id.* at 4.
- "No one from JRI followed up with Daniel [Pfankuch] to determine what medically went wrong." *Id.*

Again, these are only examples; the State's disclosures are replete with similar opinions and comments by witnesses about the acts or omissions of JRI staff and volunteers. Such evidence is irrelevant and should be excluded. The indictment in this matter charges Mr. Ray, and no one else, with three counts of reckless manslaughter. Mr. Ray's company, James Ray International, is not on trial, and neither is any JRI employee or volunteer.

Nor is there any argument that Mr. Ray is criminally responsible for the knowledge or conduct of JRI employees or volunteers. There simply is no basis in fact or law for imputing what someone else knew to Mr. Ray, and such imputed knowledge would not, in any event, be a basis for criminal responsibility. *See e.g.*, *Wyatt v. Wehmueller*, 167 Ariz. 281, 285 (1991) ("[T]he scienter element of a criminal charge cannot be satisfied by imputed knowledge." (citing 1 W. LaFave & A. Scott, Substantive Criminal Law § 3.9, at 354 (1986)). Similarly, Mr. Ray is not responsible for JRI affiliates' statements or actions. Arizona law provides for criminal responsibility for the conduct of another only in narrow circumstances not present here: a defendant, possessing the requisite culpable mental state, must *cause* the other individual to engage in the culpable conduct. *See* A.R.S. § 13-303(A) ("A person is criminally accountable for the conduct of another if . . . [a]cting with the culpable mental state sufficient for the commission of the offense, such person causes another person . . . to engage in such conduct."). The State does not argue, and could not prove, that Mr. Ray caused JRI employees or volunteers to undertake any of the actions it alleges—for example, encouraging participants to re-enter the sweat lodge.

Indeed, the evidence confirms that Mr. Ray did *not* cause any of the alleged actions by JRI employees; those witnesses who state that such conduct occurred also state that it occurred independently of Mr. Ray. *See, e.g.*, Interview of Jennifer Haley, December 16, 2010 (stating that JRI volunteer Marta Reis acted on her own and not at the direction of Mr. Ray when Reis held a participant, Sylvia De La Paz, at the sweat lodge door after De La Paz determined she did not

want to re-enter);[3] *see also* Interview of Joshua Fredrickson, November 10, 2009, at 52 (Detective Poling: "What is the Dream Team's responsibility to get them back into the lodge? Fredrickson: There's no set . . . there's no set responsibility of you need to get people back in or you're encouraged to get people back in, that's not part of anything that, that we discuss."); *id.* (Poling: "So if a Dream Team member was encouraging him go back in—Fredrickson: "They're doing that probably on their own."). Thus, evidence of conduct of JRI employees or volunteers, like evidence of their knowledge, has no bearing on the charges at issue and should be excluded from trial.

Moreover, even if the knowledge or conduct of JRI employees and volunteers had any probative value, it is appropriate for exclusion because of the undue prejudice it would cause. *See* Ariz. R. of Evid. 403. Admitting evidence of the conduct or knowledge of JRI staff or volunteers, without evidence that Mr. Ray caused such conduct, would suggest to the jury that Mr. Ray can be found guilty based on *any* JRI-related statements or actions, even if not his own. This tactic of guilt by association fails as a matter of law, and the State must not be permitted to pursue it. Instead, the State must prove beyond reasonable doubt that *Mr. Ray* had actual knowledge of the risk that the three decedents would die and that *Mr. Ray* caused the three deaths.

III. CONCLUSION

For the reasons stated, the Court should exclude from admission at trial (A) evidence that Mr. Ray did or said certain things *after* the sweat lodge ceremonies concluded; and (B) evidence that individuals *other than Mr. Ray*, but affiliated with James Ray International, did or said things that may have affected participants during the Spiritual Warrior weekend. Evidence in these two categories has no bearing on Mr. Ray's guilt or innocence and would serve only to demean Mr. Ray's character, cloud the legal issues, and mislead the jury.

[3] The defense interviewed Ms. Haley on December 16, 2010 in Thousand Oaks, California. Detective Diskin was present at the interview and Yavapai County Attorney Sheila Polk participated by telephone. Both the State and the defense recorded the interview; a transcript has not yet been prepared.

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